

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 394.

THE UNITED STATES, APPELLANT,

vs.

EDWARD P. BLISS, EXECUTOR OF DONALD McKAY,  
DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

## INDEX.

	Original. Print.	
Caption .....	1	1
Petition .....	1	1
Exhibit A—Contract between Donald McKay and John Lenthall, Chief of the Bureau of Construction and Repairs, August 22, 1863 .....	5	3
B—Contract between Donald McKay and B. F. Isherwood, Chief of the Bureau of Steam Engineering, August 22, 1863.....	11	6
C—Act for the relief of Nathaniel McKay and the executors of Donald McKay, approved August 30, 1890.....	18	11
Traverse.....	19	12
Motion for leave to amend petition, and allowance of same.....	20	12
Motion to amend title of case, and allowance of same .....	21	13
Findings of fact.....	22	13
Conclusion of law .....	23	14
Judgment .....	24	15
Motion to amend findings of fact .....	25	16
Order on foregoing motion .....	26	16
Application for, and allowance, of appeal .....	26	16
Clerk's certificate .....	27	17



1

## In the Court of Claims.

MARY C. MCKAY, EXECUTRIX, AND EDWARD P. BLISS,  
 executor of Donald McKay, deceased,

vs.

THE UNITED STATES.

No. 16828.

*I.—Petition.—Filed October 9, 1890.*

*To the chief justice and judges of the Court of Claims:*

The petition of Mary C. McKay and Edward P. Bliss respectfully represents that letters testamentary were on the first day of November, in the year of Lord one thousand eight hundred and eighty, issued to them by the probate court for the county of Essex, Commonwealth of Massachusetts, upon the estate of Donald McKay, late of said county and State aforesaid. They further represent that they are citizens of the United States, and that decedent was also a citizen of the United States.

They further represent that on the twenty-second day of August, anno Domini one thousand eight hundred and sixty-three, the said Donald McKay entered into two several contracts with the United States, one executed by John Lenthall, Chief of the Bureau of Construction and Repair of the Navy Department, for the construction and equipment of an iron paddle-wheel gunboat, the other executed by B. F. Isherwood, Chief of the Bureau of Steam Engineering of the Navy Department, for building and erecting in said vessel, called the "Ashuelot," all the machinery necessary for her propulsion. Copy of said contracts, marked Exhibits "A" and "B," are hereto attached and made part of this petition. Both contracts were to be carried out in conformity with drawings and specifications, and were to be completed within eleven months from date. The decedent had all the facilities for the due and proper performance of both contracts. He proceeded at once diligently to carry them out, and would have completed the vessel and her machinery within the contract time but for the delays caused by the defendant.

At the outset the officers of the United States were tardy in furnishing the specifications and drawings mentioned in the contract, and from time to time the work was delayed by failure to promptly furnish information and plans. They directed numerous changes and alterations, which consumed time and interfered with the progress of the original work. In consequence of these delays, caused solely by the Government, and to which the decedent did not contribute, the vessel and machinery were not completed until the twentieth day of November, anno Domini one thousand eight hundred and sixty-five. This prolonged term for the completion of the work was rendered necessary by delays, resulting from the action of the Government of the United States. During the term specified by the contract, and also during the prolonged term, there was a continuous rise in the prices of all labor and material entering into said vessel and machinery.

The additional cost necessarily incurred by the decedent in the completion of the side-wheel steamer "Ashuelot" and her machinery, by reason of the changes and alterations in the plans and

3

specifications, which he was required by the duly constituted officers of the United States to execute, and delay in the prosecution of the work was one hundred and thirty-two thousand four hundred and fifteen dollars and ninety-two cents (\$132,415.92). Such additional cost in completing the same and such changes and alterations in the plans and specifications required and delays in the prosecution of the work were occasioned by the Government of the United States. So much of such additional cost as represents the advance in the price of labor and material is for such advance as occurred during the prolonged term for completing the work rendered necessary by delay resulting from the action of the Government aforesaid, and claimants aver that such advance could not have been avoided by the exercise of ordinary prudence and diligence on the part of the contractors.

So far as claimants are informed the compensation for the respective alterations was not in any instance fixed by the Government and the decedent in advance of the alterations.

All the alterations, when made, complied with the specifications of the same as furnished by the Government, and so far as claimants are informed none of the alterations or changes caused less work and expense to the contractor than the original plans and specifications.

All the moneys heretofore paid to the decedent for the hull and machinery of the "Ashuelot" by the Government, over and above the contract price, amounted to twenty-two thousand four hundred and fifteen dollars and ninety-two cents (\$22,415.92).

By act of Congress approved August 30, 1890, this claim, inter alia, has been referred to this court. A copy of said act, hereto attached, is marked "Exhibit C."

The claimants further represent that this claim was presented  
4 to the Secretary of the Navy for his consideration under and in compliance with the act of Congress approved March 2, 1867, entitled "An act for the relief of certain contractors for the construction of vessels of war and steam machinery" (14 Stat., 424). He referred it to a board of naval officers, of which Commodore J. B. Marchand was president. The report of this board was transmitted to the President of the Senate December 4, 1867, and published as Senate Ex. Doc. No. 3, 40th Congress, second session. That board did not comply with the act of Congress and report the facts called for. It proceeded to make determinations, and, inter alia, determined nothing to be due to Donald McKay on account of the "Ashuelot."

Your petitioners pray the court that a judgment be rendered in their favor for the sum of one hundred and ten thousand dollars (\$110,000).

MARY C. MCKAY.

EDWARD P. BLISS.

JOHN S. BLAIR,

*Attorney, 1420 F street, Washington, D. C.*

MASSACHUSETTS, )  
District Boston. ) ss:

Before me, a U. S. commissioner, personally came Mary C. McKay and Edward P. Bliss, who, being duly sworn, saith that they are the

petitioners in the foregoing petition, and that the statements therein contained are just and true to the best of their information and belief.

MARY C. MCKAY.  
EDWARD P. BLISS.

Sworn and subscribed before me this third day of October, A. D. 1890.

{ Henry L. Hallett,  
U. S. Commissioner,  
{ District of Massachusetts. }

HENRY L. HALLETT,  
*U. S. Commiss., Mass. Dist.*

5

Int. Rev.  
5c.  
Stamp.  
Cancelled.

## EXHIBIT A.

## CONTRACT.

This contract, made and entered into at the city of Boston, in the State of Massachusetts, the twenty-second day of August, 1863, between Donald McKay, of the city of Boston, in the State of Massachusetts, as principal, and G. W. Questen, F. A. Sumner, O. Smith, Benjamin Pope, Daniel Lewis, Trickey & Jewett, and Eben Atkins, as sureties, of the first part, and John Lenthall, chief of the Bureau of Construction and Repair of the Navy Department, acting in the name of the Secretary of the Navy, for and in behalf of the United States of America, of the second part, witnesseth: That the said parties of the first part do hereby contract and agree with the said parties of the second part, that for the consideration hereinafter named they do hereby covenant and agree for themselves, executors, administrators, and assigns, to build, equip, and fit the hull, spars, spare spars, rigging, blocks, sails, spare sails, awnings, canvas work, boats, tanks, casks, and all the equipments and outfits connected therewith necessary for an iron paddle-wheel gunboat, to be delivered afloat, and completely supplied with equipments and outfits, except the anchors, cables, furniture, cooking utensils, instruments, stores, ordnance and ordnance stores, but in every other respect fit for sea service, except the steam machinery, which is the subject of another contract with the said parties of the first part.

The said parties of the first part further agree that the said vessel, equipments, and outfits shall conform in all respects to the specifications and drawings furnished, which constitute a part of this contract, and are to govern the parties hereby contracting as truly as if the same were incorporated in this instrument; nor is the omission therein of any  
6 detail or object necessary to carry into effect this agreement to be to the detriment of the United States, but the same shall be furnished without any additional charge whatever.

The said parties of the first part further agree, that all the materials shall be of the very best quality and free from defects; that the equipments and outfits shall conform to those used in the United States Navy, so that they may be used in connection therewith, and each and all respectively bearing the tests made of similar articles in the naval service.

{ Int. Rev. Stamp. }  
{ Cancelled. }

It is further agreed by the parties of the first part, that the person or persons appointed by the Navy Department to inspect the work shall have the power of rejecting, in any stage of its progress, any materials

or articles that they may consider defective either in material or workmanship, and to whom every part and arrangement must be satisfactory; and they will provide the said inspectors a suitable and convenient office room, and afford them satisfactory facilities for superintending the work.

The said parties of the first part further agree and contract, that the aforesaid vessel shall, with the machinery on board, be completed in eleven months from the date of this contract, and shall be promptly delivered, at their expense, to the Navy Department, at the nearest navy-yard.

The parties of the first part further agree, that the magazines, shell-rooms, light boxes, shot-lockers, shot-racks, and all parts connected therewith, with the iron ring and other bolts, and all arrangements connected with the hull and appertaining to the armament, shall be in accordance with such instructions as may be given from the Ordnance Bureau of the Navy Department; that all the apartments, state-rooms, store and other rooms, and fittings of every kind, shall be conveniently arranged and fitted to the satisfaction of the inspector appointed by the Navy Department.

7 It is further agreed by the parties of the first part to hold the United States harmless against any demand for patent fees for any patented invention for any article or arrangement that may be used by them in the construction of this vessel, and before the final payment shall be made to furnish the Navy Department with the proper release from such patentee.

And the said parties of the first part do further engage and contract, that no Member of Congress, officer of the Navy, or any person holding any office or appointment under the Navy Department, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom. And it is hereby expressly provided, and this contract is upon this express condition, that if any such Member of Congress, officer of the Navy, or other person above named, shall be admitted to any share or part of this contract, or to any benefit to arise under it, or in case the parties of the first part shall in any respect fail to perform this contract on their part, the same may be, at the option of the United States, declared null and void, without affecting their right to recover for default that may have occurred.

It is further agreed, that in case of failure or neglect on the part of the party of the first part to fulfil the stipulations of this contract and have the vessel delivered as above stipulated, the Navy Department may, at its option, enter in and take possession of, and direct purchases to be made of all the necessary materials, and cause the vessel to be completed and fully equipped as heretofore described; and any excess of cost will be at the expense of the said party of the first part, provided the delay has not been occasioned by the action of the Navy Department.

And the said United States, by the parties of the second part, do hereby contract and engage with the said parties of the first part as follows:

That the total price to be paid for the hull, equipments, and outfits, completed under all the conditions of this contract and according  
8 to the drawings and specifications, is to be one hundred and seventy-one thousand (\$171,000) dollars. The payments to be made in six equal parts, as the work progresses, with a reservation of 20

per centum from each part of twenty eight thousand five hundred (\$28,500) dollars.

But if the vessel should be completed in all respects as contemplated in this contract, before the time stipulated, then the above price of one hundred and seventy-one thousand (\$171,000) dollars is to be increased at the rate of one thousand seven hundred and ten (\$1,710) dollars per month, and in like manner, if the vessel should not be so completed, then the above price of one hundred and seventy-one thousand (\$171,000) dollars is to be decreased at the rate of one thousand seven hundred and ten (\$1,710) dollars per month. The bills for these payments to be presented in triplicate, certified by the superintendent appointed by the Navy Department that the one-sixth part of the value of this contract, in labor and materials, has been furnished in due proportion to the time, which bills, when duly approved by the parties of the second part, shall be paid to the said parties of the first part, or to their order, by the navy agent at Boston within ten days after the warrant for the same shall have been passed by the Secretary of the Treasury.

It is further mutually understood and agreed that the sixth payment is not to be made until the vessel is finished as this contract provides, and that to entitle the said parties of the first part to the twenty per centum reserved as above named, the hull, equipments, and outfits must be complete and satisfactory to the Navy Department; and the payment thereof, or as much as may be due, shall be received by the parties of the first part in full consideration of the complete fulfilment of this contract.

It is further agreed that the Navy Department shall have a lien on the vessel and on all the materials provided for the fulfilment of this contract, for the money advanced or paid by the United States on account thereof; and the said parties of the first part agree that they will keep the vessel and materials, or as much of them as are exposed and liable to injury, insured against fire and flood to the amount which may be paid on account of this contract until delivered to the Navy Department, the policies being made payable to the United States.

It is further agreed by the parties of the first part, as required by the 14th section of the act of Congress approved July 17, 1862, that neither this contract nor any interest therein shall be transferred to any other party or parties; and that any such transfer shall cause the annulment of the contract, as far as the United States are concerned; and that all rights of action are hereby reserved to the United States for any breach of this contract by the said parties of the first part.

Witness:

W. H. BANKS,  
to D. McK. to G. McQ.

DONALD MCKAY.  
GEORGE MCQUESTEN.

[L. S.]  
[L. S.]

Signed, sealed and delivered in presence of—

W. H. BANKS.  
SHUBAEL G. ROGERS to  
G. W. DENNETT to  
W. H. BANKS to  
GEO. H. SOUTHARD to  
W. H. BANKS to  
A. B. FARWELL.

F. A. SUMNER.  
OLIVER SMITH.  
BENJAMIN POPE.  
DANIEL LEWIS.  
TRICKEY & JEWETT.  
EBEN ATKINS.  
JOHN LENTHALL.

[L. S.]  
[L. S.]  
[L. S.]  
[L. S.]  
[L. S.]  
[L. S.]  
[L. S.]

[Int. rev. stamp  
cancelled.]



*Extract from a law of the United States, approved July 17, 1862.*

SECTION 16. And be it further enacted—

That whenever any contractor for subsistence, clothing, arms, ammunition, munitions of war, and for every description of supplies for the Army or Navy of the United States, shall be found guilty by a court-martial, of fraud or wilful neglect of duty, he shall be punished by fine, imprisonment, or such other punishment as the court-martial shall adjudge; and any person who shall contract to furnish supplies of any kind or description for the Army or Navy, he shall be deemed and taken as a part of the land or naval forces of the United States for which he shall contract to furnish said supplies, and be subject to the rules and regulations for the government of the land and naval forces of the United States.

STATE OF MASSACHUSETTS,

*County of Suffolk, ss:*

Benjamin Pope, being duly sworn, deposes and says that he resides in the city of Boston, in the State of Massachusetts; that he is a merchant, and that the value of his property, over and above all debts and liabilities incurred by him, is over forty-five thousand dollars.

[Int. rev. stamp]  
cancelled.

BENJAMIN POPE.

Sworn and subscribed this 5th day of December, 1863, before me.

F. M. JOSSELYN, J. P.

COMMONWEALTH OF MASSACHUSETTS,

*County of Suffolk:*

Daniel Lewis, being duly sworn, deposes and says that he resides in the city of Roxbury, in the State of Massachusetts; that he is a merchant, and that the value of his property, over and above all debts and liabilities, is over forty thousand dollars.

DANIEL LEWIS.

Sworn and subscribed this 5th day of December, 1863, before me.

F. M. JOSSELYN.

[Int. Rev. Stamp]  
Cancelled.

[Int. rev. stamp]  
cancelled.

I certify that I have made due and diligent personal inquiry as to the ability of the sureties in this contract, and am satisfied that they are good and sufficient for the sum of one hundred and seventy thousand dollars.

E. L. NORTON, *Nary Agent.*

11

EXHIBIT B.

CONTRACT.

This contract, made and entered into at the city of Boston, in the State of Massachusetts, the 22d day of August, 1863, between Donald McKay, of the city of Boston, in the State of Massachusetts, as principal, and Geo. Questen, F. A. Sumner, Oliver Smith, Benj. Pope, Daniel Lewis, Trickey & Jewett, and Eben Atkins, all of the city of Boston



and State of Massachusetts, as sureties of the first part, and B. F. Isherwood, chief of the Bureau of Steam Engineering, Navy Department, acting in the name of the Secretary of the Navy, for and in behalf of the United States of America, of the second part, witnesseth: That the said parties of the first part do hereby contract and agree with the said parties of the second part that, for the consideration hereinafter named, they do hereby covenant and agree for themselves, executors, administrators, and assigns, to build and erect, at their expense and risk, in a secure and finished state, fit in every respect for sea service in the United States, iron paddle-wheel steamer "Ashuelot," at their works in ; all the machinery necessary to the propulsion of the same by a single inclined paddle-wheel engine of fifty-eight inches diameter of cylinder, and eight feet nine inches stroke of piston, with two main boilers and two superheating boilers, together with all appurtenances, coal bunkers, instruments, tools, and spare pieces that may be required for proper working according to the usages of the naval service.

The said parties of the first part further agree that the said machinery, appurtenances, coal bunkers, instruments, tools, and spare pieces shall conform in all respects to the specifications and list of articles  
12 hereunto attached, which constitute a part of this contract, and are to govern the parties hereby constructing as truly as if the same were incorporated in this instrument; nor is the omission therein of any detail, or object necessary to carry into effect the intent of this agreement, to be to the detriment of the United States; but the same shall be furnished by the said parties of the first part to the satisfaction of the said parties of the second part, without extra compensation therefor.

The said parties of the first part further agree that all the materials, workmanship, detail, and finish shall be of the first class; and the engines and boilers proportioned to furnish and sustain continuously a working pressure of forty pounds per square inch above the atmosphere.

The said parties of the first part further agree that the Secretary of the Navy shall have the right to appoint a person to superintend the construction of the machinery, who shall have power to inspect it at all times, and to permanently reject on any stage of its progress, any materials, or articles, or any piece or part which he may consider defective, either in quality of material and/or of workmanship, or in propriety of detail; and that they shall provide the said person suitable and convenient office room, and shall furnish him satisfactory facilities for superintending the work.

The said parties of the first part do further agree that they will make, at their own cost, and deliver to the Navy Department within one month after the completion of the machinery, neat drawings on double elephant paper, and to scale, of every piece or part used in the construction thereof; also, general plans showing the combination and arrangement of the whole; all to be in sufficient detail, with dimensions figured on, to enable the same to be again constructed, together with an inventory of the weight and material of each part of said machinery and of all its appurtenances.

It is further agreed by the parties of the first part to hold the  
13 United States harmless against any demand for patent fees for any patented invention for any article or arrangement that may be

used by them in the construction of the machinery of this vessel; and, before the final payment shall be made, to furnish the Navy Department with a proper release from such patentee.

And the said parties of the first part do further engage and contract that no Member of Congress, officer of the Navy, or any person holding any office or appointment under the Navy Department, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom. And it is hereby expressly provided, and this contract is upon the express condition, that if any Member of Congress, officer of the Navy, or other person above named shall be admitted to any share or part of this contract, or to any benefit to arise under it, or in case the parties of the first part shall in any respect fail to perform this contract on their part, the same may be, at the option of the United States, declared null and void, without affecting their right to recover for defaults which may have occurred.

And the said parties of the first part do further agree that the said machinery, appurtenances, coal bunkers, instruments, tools, and spare pieces, complete in all respects and ready for continuous sea service, shall be on board the vessel within                      months from the date of this contract, the hull of the vessel being the subject of another contract with the said parties of the first part, unless prevented by the act of the Government or by circumstances beyond the control of the parties of the first part, it being understood that by "circumstances beyond the control of the parties of the first part" is meant accidents, by fire or water, to the machinery on the premises of the parties of the first part, or while being erected in the vessel; but delays by persons furnishing the parties of the first part with stock or material or caused by loss of castings or forgings condemned for any reason whatever are not within the

14      meaning of the phrase "circumstances beyond the control of the parties of the first part."

And it is further agreed and mutually understood that in case the machinery shall not be fully completed in the vessel ready for sea service at the expiration of the said eleven months after the said parties of the first part are notified that the vessel is at their command, the said party of the second part is authorized to take possession of said machinery and complete it at the expense of the said parties of the first part.

The said parties of the first part do hereby guarantee the following points:

First. A successful and satisfactory operation at sea of the machinery and appurtenances during the trial of one hundred and forty-four consecutive hours, under steam of the maximum pressure that the boilers can be made to furnish, not exceeding forty pounds per square inch above the atmosphere, during which time the lubrication is to be thorough and easy, the journals free from heating, the stationary parts free from working or motion on their fastenings, and the whole performance of such a character as to demonstrate the satisfactory strength, reliability, practical efficiency, and durability of the entire machinery.

Second. That during the period of three months from the termination of the above trial there shall be no deterioration or depreciation of the materials of which any of the machinery and its appurtenances are composed beyond that of ordinary friction. And that there shall be no

fracture of any of the parts from imperfection in design of detail or from faulty workmanship.

Third. That the vacuum during the trial of one hundred and forty-four hours aforesaid shall at no time be less than  $26\frac{1}{2}$  inches of mercury.

The entire responsibility of fulfilling the above guarantees is to rest with the said parties of the first part, who will make their own  
15 working drawings, rigorously adhering to the specifications hereunto annexed, and the general drawings furnished, forming part of this contract, for such parts as are therein given, taking particular care that all the parts come accurately together with the proper clearances and symmetry.

It is also further agreed and mutually understood, that in the event of a failure from imperfection in the design of the detail, malconstruction of the machinery, fault of workmanship, or by reason of the quality and composition of the materials used, at any time during the trial trip of one hundred and forty-four hours, and within the stipulated three months thereafter, the Navy Department is authorized to have all modifications, alterations, substitutions, and repairs made, to the extent that will give permanently a satisfactory operation, and the sum or sums paid therefor shall be at the expense of the said parties of the first part.

It is further agreed and mutually understood, that during the trial trip of one hundred and forty-four hours the parties of the first part shall have the right of having the machinery placed under the management and control of an engineer appointed and paid by them, who shall, during such trial, be subject to the regulations of the naval service, and such personal and official supervision of the engineers appointed by the Navy Department as may be directed by the Secretary of the Navy, and to secure a fair and satisfactory test of the machinery.

And the said United States, by the parties of the second part, do hereby contract and engage with the said parties of the first part, as follows:

That the total price to be paid for the machinery, appurtenances, coal bunkers, tools, and spare pieces, completed under all the conditions of this contract, and according to the drawings and specifications, is to be \$104,000. The payments to be made in six equal parts as the work

16 progresses, with a reservation of twenty per centum from each part of \$17,333 $\frac{1}{3}$ . But if the machinery, appurtenances, coal bunkers, tools, and spare pieces should be completed in all respects, as contemplated in this contract, before the time stipulated, then the above price of \$104,000 is to be increased at the rate of \$1,040 per month; and in like manner, if the machinery, appurtenances, coal bunkers, tools, and spare pieces should not be so completed, then the above price of \$104,000 is to be decreased at the rate of \$1,040 per month.

The bills for these payments to be presented in triplicate, certified by the superintendent appointed by the Navy Department that the one-sixth part of the value of the contract in labor and materials has been furnished and done in this contract; which bills, when duly approved by the parties of the second part, shall be paid to the said parties of the first part, or their order, by the Navy agent at the city of Boston, within ten days after the warrants for the same shall have been passed by the Secretary of the Treasury.

It is further mutually understood and agreed that the last payment is not to be made until the machinery, appurtenances, coal bunkers, tools, and spare pieces are furnished as this contract provides; and that to entitle the said parties of the first part to the twenty per centum reserved as above-named, the machinery, appurtenances, coal bunkers, tools, and spare pieces must be complete and satisfactory to the Navy Department, and the machinery must have operated during the said three months as guaranteed, without deterioration or fracture; and the payment thereof, or as much as may be due, shall be received by the parties of the first part in full consideration of the complete fulfillment of this contract.

And it is further agreed that within forty-five consecutive days after the vessel is delivered fully completed the Navy Department will have prepared it for sea and commenced the trial of one hundred and forty-four hours; and in default of this, any additional time that may elapse shall be deducted from the three months aforesaid intervening between the next to the last and the last payments.

And the said parties of the first part do further agree that the Navy Department shall have a lien on the machinery, and all the materials, etc., provided for the fulfilment of this contract, for the money advanced or paid by the United States on account thereof; and that they, the said parties of the first part, will keep the machinery, materials, etc., insured against loss by fire to the amount which may be paid on account of this contract, the policies, in case of loss, being made payable to the Government.

It is further agreed by the parties of the first part, as required by the 14th section of the act of Congress approved July 17, 1862, that neither this contract nor any interest therein shall be transferred to any party or parties; and that any such transfer shall cause the annulment of the contract, as far as the United States are concerned; and that all rights of action are hereby reserved to the United States for any breach of this contract by the said parties of the first part.

Signed, sealed, and delivered in the presence of—

W. H. BROOKS to	DONALD MCKAY.	[L. S.]
W. H. BROOKS to	GEO. W. QUESTEN.	[L. S.]
W. H. BROOKS to	F. A. SUMNER.	[L. S.]
SHUBAEL G. ROGERS to	OLIVER SMITH.	[L. S.]
G. W. DENNETT to	BENJAMIN POPE.	[L. S.]
W. H. BROOKS to	DANIEL LEWIS.	[L. S.]
GEO. H. SOUTHARD to	TRICKEY & JEWETT.	[L. S.]
W. H. BROOKS to	EBEN ATKINS.	[L. S.]
F. M. JOSSELYN to	HENRY JONES.	[L. S.]
F. B. F. I.	B. F. ISHERWOOD.	[L. S.]
EDW. B. NEALLY.		

*Extract from a law of the United States, approved July 17, 1862.*

SECTION 16. *And be it further enacted,* That whenever any contractor for subsistence, clothing, arms, ammunition, munitions of war, and for every description of supplies for the Army or Navy of the United States shall be found guilty by a court-martial of fraud or wilful neglect of duty, he shall be punished by fine, imprisonment, or such other punish-

ment as the court-martial shall adjudge; and any person who shall contract to furnish supplies of any kind or description for the Army or Navy, he shall be deemed and taken as a part of the land or naval forces of the United States for which he shall contract to furnish said supplies, and be subject to the rules and regulations for the Government of the land and naval forces of the United States.

18

## EXHIBIT C.

[Private—No. 604.]

AN ACT for the relief of Nathaniel McKay and the executors of Donald McKay.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the claims of Nathaniel McKay and the executors of Donald McKay for further compensation for the construction of the iron-clad monitors Squando and Nauset, and the side-wheel steamer Ashuelot, may be submitted by said claimants within six months after the passage of this act to the Court of Claims, under and in compliance with the rules and regulations of said court; and said court shall have jurisdiction to hear and determine and render judgment upon the same: *Provided, however,* That the investigation of said claim shall be made upon the following basis: The said court shall ascertain the additional cost which was necessarily incurred by the contractors for building the light-draught monitors Squando and Nauset and the side-wheel steamer Ashuelot in the completion of the same, by reason of any changes or alterations in the plans and specifications required and delays in the prosecution of the work: *Provided,* That such additional cost in completing the same, and such changes or alterations in the plans and specifications required, and delays in the prosecution of the work were occasioned by the Government of the United States; but no allowance for any advance in the price of labor or material shall be considered unless such advance occurred during the prolonged term for completing the work rendered necessary by delay resulting from the action of the Government aforesaid, and then only when such advance could not have been avoided by the exercise of ordinary prudence and diligence on the part of the contractors: *And provided further,* That the compensation fixed by the contractors and the Government for specific alterations in advance of such alterations shall be conclusive as to the compensation to be made therefor: *Provided,* That such alterations, when made, complied with the specifications of the same as furnished by the Government aforesaid: *And provided further,* That all moneys paid to said contractors by the Government over and above the original contract price for building said vessel shall be deducted from any amounts allowed by said court by reason of the matters hereinbefore stated: *And provided further,* That if any such changes caused less work and expenses to the contractors than the original plan and specifications a corresponding deduction shall be made from the contract price, and the amount thereof be deducted from any allowance which may be made by the said court to said claimants.

Approved, August 30, 1890.

In the Court of Claims of the United States. December term, A. D. 1889.

EXRS. OF DONALD MCKAY }  
*vs.* } No. 16828.  
 THE UNITED STATES. }

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,  
*Assistant Attorney-General.*

20 III.—*Motion for leave to amend original petition and allowance of same.*

Now come the claimants and move the court for leave to amend the original petition filed in this case by making the following addition; and further pray that the printing of this amendment may be dispensed with:

"The claimants further assert that they and they only are the owners of the claim hereinbefore mentioned, and that no other person is interested therein except so far as there is a resulting interest to the legatees under the will of Donald McKay, deceased. They further set forth that no assignment or transfer of such a claim or any part thereof has been made to any other person; that the claimants are justly entitled to the amount therein claimed from the United States; that they and their decedent were, or are, citizens of the United States, and have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government, and they believe the facts set forth in the petition to be true to the best of their knowledge.

MARY C. MCKAY,  
 EDWARD P. BLISS,  
*Executors.*

COMMONWEALTH OF MASSACHUSETTS,  
*Suffolk County, to wit:*

Before me, Robert P. Clapp, notary public, personally came Edward P. Bliss and Mary C. McKay, and severally swear that the foregoing amendment is a true and correct statement to the best of their knowledge.

In witness whereof I hereunto set my hand and official seal this 9th day of January, A. D. 1891.

ROBERT P. CLAPP,  
*Notary Public.*

Allowed.

WILLIAM A. RICHARDSON,  
*Chief Justice.*

Filed January 15, 1891.



21 IV.—*Motion to amend title of case filed February 2, 1896, and allowance of same.*

Now comes the claimant, Edward P. Bliss, by his attorney, John S. Blair, and respectfully represents that on the 17th of September, 1890, there was filed with the clerk of this court, in the cause No. 16821, wherein Mary C. McKay and Edward P. Bliss were plaintiffs, a certificate from the register of probate court in and for the county of Essex, State of Massachusetts, to the effect that letters testamentary had issued to him, the said Edward P. Bliss and Mary C. McKay, on the estate of Donald McKay, late of said State and county, deceased, on the 1st of November, 1880, which letters were then in force.

He further represents that on the 3rd day of April, anno Domini one thousand eight hundred and ninety-four, the probate court in and for said county and State, at a probate court held at Salem, Massachusetts, in said county, ordered and directed that the resignation of the trust of executrix of the will of Donald McKay, late of Hamilton, in said county, thereto presented by the said Mary C. McKay, be accepted, leaving Edward P. Bliss to act as sole executor, as appears by a certified copy of the proceedings of said court, which were on the 11th day of April, 1894, filed in the cause aforesaid, No. 16821.

Wherefore your petitioner prays that the title of this cause be amended so as to read: Edward P. Bliss, executor of Donald McKay, deceased, against the United States.

JOHN S. BLAIR,  
*Attorney for Claimant.*

Filed February 2, 1896.  
Allowed.

CHARLES C. NOTT,  
*Chief Justice.*

22 V.—*Findings of fact and conclusion of law.—Filed April 18, 1898.*

Court of Claims.

EDWARD P. BLISS, EXECUTOR OF DONALD MCKAY,	}	No. 16828.
<i>v.</i>		
THE UNITED STATES.		

This case having been heard by the Court of Claims, the court, on the evidence, makes the following

FINDINGS OF FACT.

I.

On August 22, 1863, Donald McKay contracted with John Lenthall, Chief of the Bureau of Construction and Repair, acting in the name of the Secretary of the Navy and in behalf of the United States, for the construction of the hull, spars, and complete equipment and outfit, except the machinery, of an iron, double-ender, paddle-wheel gunboat, afterwards called the "Ashuelot," to be completed in eleven months from that date, for the sum of \$171,000, which contract is set forth in the petition herein.



## II.

On the same day, August 22, 1863, the said Donald McKay contracted with B. F. Isherwood, Chief of the Bureau of Steam Engineering, acting in the name of the Secretary of the Navy and in behalf of the United States, for the construction of the machinery, appurtenances, etc., of the said gunboat, to be completed in eleven months from that date, for the sum of \$104,000, which contract is set forth in the petition herein.

## III.

The said contractor fulfilled both of the said contracts, and was paid the full contract price for the work, viz, \$275,000.

Changes and additional work were ordered from time to time during the construction of the vessel and machinery, for which changes and additional work the further sum of \$25,407.54 was also paid.

The cost of changes and additional work, over and above what has been paid therefor, was \$4,153.05.

## IV.

On account of these changes and additional work required by the Government, and also on account of other delays for which the defendant was responsible, the completion of the vessel was delayed from July 22, 1864, to November 29, 1865, or a period of sixteen months and seven days beyond the expiration of the contract period of eleven months, and it does not appear that the contractor could have avoided this delay.

The contractor owned the shipyard where the "Ashuelot" and the "Nauset" were built, and his facilities for completing the "Ashuelot" within the time specified in the contract were ample.

## V.

The "Ashuelot" and the light-draft monitor "Nauset" were built in Donald McKay's shipyard, in East Boston, Mass. During their construction, between August 30, 1864, and March 30, 1865, work for private parties was being done in said shipyard, in the construction of two small wooden tugboats, one propeller steamer, and one small screw steamer, upon which there was employed from time to time an average of about twenty men. But said work does not appear to have materially interfered with or delayed the work on the two vessels then being constructed in said shipyard for the defendant.

## VI.

During the contract period of eleven months, and to some extent during the succeeding sixteen months and seven days, the Government made frequent changes and alterations in the construction of the vessel and delayed in furnishing to the contractor the plans and specifications therefor, by reason of which changes and delay in furnishing plans and specifications the contractor, without any fault or lack of diligence on his part, could not anticipate the labor, nor could he know the kind, quality, or dimensions of material which would be made necessary to be used in complying with said changes.

While the work was so delayed during and within the period of the contract as aforesaid the price of labor and material greatly increased, which increased price thereafter continued without material change until the completion of the vessel sixteen months and seven days subsequent to the expiration of the contract period. The increased cost to the contractor as aforesaid was by reason of the delays and inaction of the Government and without any fault on his part.

The cost to the contractor because of the enhanced price of labor and material as aforesaid was for labor, excluding cost of superintendents, clerks, and draftsmen, \$12,608.71, and for material, \$14,815.66, or for both labor and material, \$27,424.37, which increase price of labor and material could not have been avoided by the contractor by the exercise of ordinary prudence and diligence.

## VII.

The cost to the contractor for superintendents, clerks, and draftsmen after the expiration of the contract period until the completion of the vessel was \$5,480.06.

The necessary cost to the contractor for insurance during the same period was \$1,917.97.

## VIII.

On the foregoing findings the court allows the following items :

Finding III. Cost of changes and extra work.....	\$4,153.05
Finding VI. Labor.....	12,608.71
Material.....	14,815.66
Finding VII. Superintendents, clerks, etc.....	5,480.06
Insurance.....	1,917.97
	<hr/>
	38,975.45

No allowance is made for rent of shipyard, shops, or plant or for interest paid on money borrowed during the said periods of delay, nor for the contractor's time, though interest was so paid and the shipyard and contractor's time was each of substantial value.

## CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant recover judgment against the United States in the sum of thirty-eight thousand nine hundred and seventy-five dollars and forty-five cents (\$38,975.45).

24

VI.—*Judgment of the court.*

EDWARD P. BLISS, EXECUTOR OF DONALD MCKAY,	} No. 16828.
deceased,	
vs.	
THE UNITED STATES.	

At a Court of Claims held in the city of Washington of the 18th day of April, A. D. 1898, judgment was ordered to be entered as follows :

The court, on due consideration of the premises, finds for the claimant, and do order, adjudge, and decree that the said claimant, Edward P.

Bliss, executor of Donald McKay, deceased, do have and recover of and from the United States the sum of thirty-eight thousand nine hundred and seventy-five dollars and forty-five cents (\$38,975.45).

BY THE COURT.

25 VII.—*Defendant's motion, filed May 25, 1898, to amend the findings of fact, and order overruling same.*

Now comes the Attorney-General on behalf of the defendant, and moves this honorable court to amend the sixth line of the fifth finding in this case by substituting the words "about forty-five men" for the words "about twenty men," for the following reason:

The statement that about twenty men were employed from time to time on the private work done in Donald McKay's shipyard during the construction of the "Ashuelot" is evidently based on the local inspector's reports on the hull only, and without regarding the similar reports made by the same inspector upon the machinery, these reports having been separately made because there were two contracts, one for the hull and the other for the machinery. Taking these two sets of reports together, the number of men reported as employed on the different dates in the various reports is as follows: October 29, 1864, 46; November 14, 1864, 33; November 29, 1864, 34; December 13, 1864, 34, to which 4 black-smiths and 6 boiler makers should presumably be added; December 30, 1864, 47; January 13, 1865, 61; January 29, 1865, 55. The average of these seven reports gives nearly 45 men employed on private work.

L. A. PRADT,

*Assistant Attorney-General.*

CHARLES C. BINNEY,

*Special Attorney in Charge of Case.*

26 *Order of court on foregoing motion.*

The number of men employed on private work goes only to the value of the claimant's time and rental of shipyard, and as neither has been fixed by the court the question will still lie open if the case comes before the court again.

BY THE COURT.

MAY 31, 1898.

VIII.—*Application for and allowance of appeal.*

EDWARD P. BLISS, EXECUTOR OF DONALD MCKAY,	} No. 16828.
dec'd,	
vs.	
UNITED STATES.	

From the judgment rendered in the above-entitled cause on the 18th day of April, 1898, in favor of the claimant, the defendants, by their Attorney-General, on the 16th day of July, 1898, make application for, and give notice of, an appeal to the Supreme Court of the United States.

LOUIS A. PRADT,

*Assistant Attorney-General.*

Filed July 16, 1898.

The defendants, by their assistant attorney-general, having made application in vacation for the allowance of this appeal, it is allowed this 8th day of August, 1898.

CHARLES C. NOTT,  
*Chief Justice of the Court of Claims.*

27

In the Court of Claims.

EDWARD P. BLISS, EXECUTOR OF DONALD MCKAY,	}	No. 16828.
dec'd,		
vs.		
THE UNITED STATES.		

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of judgment of the court, and of the application for and the allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 2d day of September, 1898.

[SEAL.]

JOHN RANDOLPH,  
*Ass't Clerk Court of Claims.*

(Indorsement on cover:) Case No. 16979. Court of Claims. Term No. 394. The United States, appellant, vs. Edward P. Bliss, executor of Donald McKay, deceased. Filed September 9, 1898.



## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 394.

THE UNITED STATES, APPELLANT, v. EDWARD P. BLISS,  
EXECUTOR OF DONALD McKAY, DECEASED.

## STIPULATION.

It is hereby agreed by and between the parties to this cause that the following facts appear in the records of the Court of Claims, and that they may be added to the record in this cause and be treated upon the hearing with the same effect as if they had been included in the facts found by the Court of Claims:

## IX.

The appellee in this cause brought suit in the Court of Claims for further compensation for the construction by Donald McKay of the iron-clad monitor "Nauset," under the provisions of the act of Congress approved August 30, 1890, set out at page 11 of this record. The Court of Claims entered judgment on the 14th of May, 1894, in that cause (No. 16821) in favor of the claimant and against the United States for \$123,628.42, and filed findings of fact. The findings showed that the judgment for \$123,628.42 was composed of the following items:

	Additional cost of extras and changes over the sums already received.	\$41,375.00
2	Cost to the contractor because of the enhanced price of labor and material which occurred during the prolonged term for completing the work	64,977.92
	Clerk hire, superintendence, &c.	17,275.50
		<hr/> 123,628.42

On the 2nd of July, 1894, the Attorney-General moved for a new trial, alleging that each of the three items composing the judgment was not sustained by the evidence. On the 28th of November, 1894, the Attorney-General moved to amend the findings so that \$20,000 should be substituted for \$41,375, \$25,000 should be substituted for \$64,977.92, and in place of \$17,275.50 substitute \$10,000. In support of his claim that the item \$64,977.92 was excessive he alleged that the evidence

showed that not more than \$25,000 of that sum was for enhancement of cost after the termination of the original contract period (p. 17), and that thus the claimant received "allowance for large quantities of goods and labor purchased in the contract term and not in the prolonged period to which he is confined by the statute" (p. 19).

After argument of the motion the Court of Claims announced the following deductions:

\$41,375.00 less	\$17,142.44 equals	\$24,232.56
64,977.92 less	3,406.25 equals	61,571.67
17,275.50 less	1,550.00 equals	15,725.50
<hr/>		
\$123,628.42	\$22,098.69	\$101,529.73

and gave *the* to the claimant the alternative of remitting the judgment to \$101,529.73 or the allowance of the defendants' motion for a new trial.

- 3 The claimant filed such remittitur January 31, 1895, and on the 5th February, 1895, the court filed new findings of fact.

## X.

The final findings by the Court of Claims and conclusion of law in that cause were as follows:

- 4 Court of Claims.

EDWARD P. BLISS, EXECUTOR OF DONALD MCKAY,	} No. 16821.
deceased,	
v.	
THE UNITED STATES.	

### FINAL FINDINGS OF FACT.

This case having been heard by the Court of Claims, the court, upon the evidence, find the facts to be as follows:

I. The Secretary of the Navy, on the 4th of July, 1861, in his message to Congress, recommended the appointment of a proper and competent board to inquire into the subject of floating batteries or ironclad steamers and make a report. Under the act of August 3, 1861, a board was appointed. An advertisement was published August 7, 1861, inviting the submission of designs. Seventeen proposals were received, all of which were rejected except three. The recommendations of the board were approved, and three contracts were entered into.

The New Ironsides, built by Merrick & Sons, was an ironclad broad-side frigate carrying 11-inch guns. The Galena, built by C. S. Bushnell, was a small corvette plated with iron. The Monitor, built by John Ericsson, was of a novel design and characterized by the revolving turret and low free board.

Nothing appears to have been done in the way of expending the money appropriated by the act of February 12, 1862, until the conflict between the Monitor and Merrimac on the 9th of March, 1862, demonstrated the utility of Mr. Ericsson's invention.

The Department, as soon as the engagement was over, gave to Mr. Ericsson an order for six more monitors, one of which was called the



Passaic. The original monitor was built in one hundred days. The vessels of the Passaic class were built in six months.

In these cases Capt. Ericsson had made the detailed drawings before taking the contracts. In the fall of 1862 the Navy Department entered into contracts for the construction of nine vessels known as river and harbor monitors, which were to be modifications of the Passaic class.

During the year 1862 the necessity for some light-draft armored vessels for operations on our Western rivers and the shallow bays and sounds of the Atlantic and Gulf coasts became so urgent that the Navy Department determined to provide some for that purpose if possible. Application was made to Mr. John Ericsson, the inventor of the original monitor, for a plan of a light-draft monitor to carry one turret and to have a draft of from 6 to 6½ feet. On the 9th of October Mr. Ericsson submitted to the Department a plan which was not intended as a working plan, yet it defined the general principle and the mode of building the vessel, engines, boilers, and propeller.

5 II. The Navy Department issued the following advertisement:

*"Light-draft vessels for rivers and bays.*

*"NAVY DEPARTMENT, February 10, 1863.*

"The Navy Department will receive proposals for the construction and completion in every respect (except guns, ordnance stores, fuel, provisions, and nautical instruments) of armored steamers, of about 700 tons, of wood and iron combined, having a single revolving turret.

"On personal application at the Navy Department in Washington or to Rear-Admiral Gregory, No. 415 Broadway, New York, parties intending to offer can examine the plans and specifications which will be furnished to the contractors by the Department.

"No offer will be considered unless from parties who are prepared to execute work of this kind, having suitable shops and tools, of which, if not known to the Department, they must present evidence with their bid.

"The act of Congress approved July 17, 1862, prohibits the transfer of any contract or order, or interest therein.

"The bidders will state the price and the time within which they will agree to complete the vessel or vessels, and the bid must be accompanied by the guaranty required by law, that if awarded to them they will promptly execute the contract.

"Proposals will be received until the 24th day of February, and they must be indorsed 'Proposals for vessels for river defense,' to distinguish them from other business letters."

III. From the bids thus received uniform prices were established of \$386,000 and \$395,000, and during the months of March, April, May, June, and July, 1863, contracts were made for the building of 20 light-draft monitors upon the same plan. Mr. Stimers was placed in charge of their construction, and the contractors were directed to look to him for instructions. He was ordered to consult with Mr. Ericsson in preparing his plans and drawings for contractors, and, at his own request, was authorized to establish an office and employ assistants in New York City, where he could have facilities and easy consultation with Mr. Ericsson.

IV. On the 10th of June, 1863, Donald McKay entered into the contract set forth in the petition, and the same day he received the specifications set forth below, but no drawings were received until the 24th of June. These specifications were identical with those issued in the Squando, which differed from the ones on which the bids were made in that they embodied additional and more expensive work.

On the execution of the agreement, the contractor set to work to prepare his sheds in which to build the hull, and to make such other preparations for carrying out the agreement as his information permitted.

"SPECIFICATIONS OF THE LIGHT-DRAFT MONITOR NAUSET.

*"General description.*

"The vessel will be of iron and wood, as follows:

"*General form.*—There will be an iron vessel, oval in form, with flat bottom, having one inch dead rise and vertical sides; the bilge of this iron vessel will be formed by a curve of 15-inch radius.

"Surrounding this iron vessel is what may be termed a raft of wood, having three inches less depth than the iron vessel and fitting it closely.

The outer form of the raft, or wooden portion of this vessel, will be of the usual character of an ordinary vessel, extending forward of the iron one 13 feet; abaft it 20 feet 9 inches, and upon each side 4 feet, with three inches thickness of iron armor plating in three thicknesses of one inch each, by three feet wide in the vertical direction, to be let in flush with the sides of the wooden vessel.

"*Deck.*—The deck will be composed of oak beams 15 inches deep in the center, placed side by side, with their joints thoroughly caulked and pitched, forming a solid roof over the iron hull.

"The deck plating will run longitudinally, arranged with a view to strength in that direction. These plates will extend over the side raft, to which they are secured by bolts extending down to the bottom of the woodwork.

"*Iron hull.*—The sides and bottom of the iron hull will be stiffened by angle-iron frames placed at intervals of 18 inches. Transverse strength will be given by two rows of stanchions and diagonal braces placed 3 feet apart, the top ends of the two rows of stanchions to be connected by straps of iron fitting close to the underside of deck beams. Over the boilers the straps will extend to the side of the iron hull and be secured thereto by  $3\frac{1}{2} \times 3\frac{1}{2} \times \frac{1}{2}$  inch angle iron. Knees stiffened by plate-iron gusset pieces  $\frac{3}{8}$  inch thick. The bottom of the iron hull will be plated in the ordinary way, but the sides may have all joints lapped with rivets projecting on both sides.

"The wooden hull to be covered with coal tar and patent felt, and over this sheet iron, painted with two coats of white zinc inside and three coats of same paint outside, sheet iron two pounds to the square foot.

"*Keelsons.*—There will be two keelsons running the whole length of the iron hull, formed of  $\frac{3}{4}$ -inch plate iron, 12 inches high, topped by two bars of  $2\frac{1}{2} \times 2\frac{1}{2} \times \frac{5}{16}$  inch angle iron. Between the turret bulkhead and the boilers these keelsons will run together, so as to form a box keelson

12 inches wide, which will continue in that form to the stern of the vessel; forward of the turret bulkhead they will be one-third of the breadth of the vessel, from center to center; a cross floor 12 inches deep (same height as center, fore, and aft keelson),  $\frac{5}{16}$  inch thick to every fourth frame, and topped with one bar of  $2\frac{1}{2} \times 2\frac{1}{2} \times \frac{5}{16}$  inch angle iron on the opposite side to frame, straight out to bilge, so as to strengthen the bottom between diagonal braces.

"Under the boilers a reverse bar of angle iron  $3\frac{1}{2} \times 3\frac{1}{2} \times \frac{7}{16}$  will be attached to every second frame, running it up to deck beams on the side and raising it up to the same height as center keelson in the center, thus forming a good seat for the boilers.

"*Water compartments.*—There will be extending all around the iron hull a water-tight compartment 2 feet wide, except at the stern, where it will be diminished to 21 inches. The bottom of this will be formed by plate iron lapping on the bilge strake, to which it will be securely riveted; the sides and bottom will be stiffened by  $3\frac{1}{2} \times 3\frac{1}{2} \times \frac{7}{16}$  inch angle-iron frames, spaced 3 feet apart. The bottom for the space of 90 feet amidships will be  $\frac{1}{2}$  inch thick; at the ends it will be  $\frac{3}{4}$  inch thick. The sides will be formed of  $\frac{5}{16}$ -inch iron, which may be lapped. The bottom must be butted and strapped; the sides will be topped by a bar of  $6 \times 3\frac{1}{2} \times \frac{1}{2}$  inch angle iron, to which the beams will be bolted. This space or compartment will be divided into subcompartments by bulkheads, communication being had to each compartment by means of wrought-iron pipe placed inside the compartment and communicating with the inside of the vessel abaft the boilers.

"Suitable cocks or valves will be placed connecting with this pipe, so as to allow a separate communication with each compartment.

"*Pumps.*—These compartments will be emptied by means of two powerful steam pumps, one to be placed upon each side of the vessel between the boilers and the engines.

"These pumps must be equal in capacity and efficiency to Andrews' No. 9 centrifugal pumps, to be driven 300 revolutions and deliver 3,000 gallons per minute. A sea valve for the purpose of filling the compartments will be placed near the pumps.

"*Construction of raft.*—The external woodwork will be firmly attached to the iron hull by a series of eyebolts secured to the angle-iron frames on the outside of the hull, without through bolts. To facilitate this construction the holes through the wooden timbers will be larger than the bolts, so that they will pass through loosely, the whole being screwed firm by nuts bearing against large square washers cut from plate iron  $\frac{1}{4}$  of an inch thick.

"*Armor stringers at bow.*—Underneath the armor plating, for a distance of 25 feet from the bow, there will be inserted, upon each side, two armor stringers, 9 by 7 inches in section.

"*Turret.*—There will be one turret 8 inches thick, 20 feet internal diameter, and 9 feet high, with a band of forged iron 5 inches thick by 15 inches wide, forged in four pieces, riveted to the lower part upon the outside as per drawing. This band must be forged from the best charcoal scrap iron, that it may not break when struck by heavy shot. A pilot house will be placed on the top, 10 inches thick, 6 feet internal diameter

by 6 feet 6 inches high. The turret to be arranged to carry two guns of 16,000 lbs. weight each, and to be revolved by steam machinery similar to those now building. This similarity will extend to the blowers and blower engines, and to the arrangements for ventilating the vessel. There will also be a rifle-proof screen, of suitable height, of half-inch iron, around the top of the turret, for "sharpshooters." All plates, both of pilot house and turret, to be heated when bent.

"*Rudder.*—The rudder will be equipoise, and will be worked from the pilot house on the top of the turret and from top of turret, as in the monitor fleet, now building.

## GIRCE

## "Plating of hull.

		Under engines.
Thickness of keel plates .....	$\frac{1}{2}$ inch to $\frac{3}{16}$ inch.	
Breadth " " " .....	24 inches.	
	90 feet in length amidships.	Ends.
Thickness of garboard strake .....	$\frac{1}{2}$ inch.	$\frac{7}{16}$ inch.
Thickness of bilge strake .....	$\frac{1}{2}$ inch.	$\frac{1}{2}$ inch.
Other parts of bottom thickness .....	$\frac{7}{16}$ inch.	$\frac{1}{2}$ inch.
Thickness of sides .....	$\frac{1}{2}$ inch.	

"*Riveting.*—Bottom to be butt jointed and strapped with straps equal to the thickness of the sheets joined; straps to be 8 inches wide and double riveted; garboard strake to be double riveted to the keel with a lap of  $3\frac{3}{4}$  inches, to be measured after seams are caulked. Nine-sixteenth-inch plates to be riveted together, and to thinner plates by  $\frac{7}{8}$ -inch rivets, spaced  $2\frac{1}{2}$  inches apart between centres. Half-inch plates by  $\frac{1}{2}$ -inch rivets, spaced  $2\frac{1}{4}$  inches apart. Seven-sixteenth-inch plates by  $\frac{3}{4}$ -inch rivets, spaced  $2\frac{1}{2}$  inches apart. Five-sixteenth-inch plates by  $\frac{5}{8}$ -inch rivets, spaced 2 inches apart. Between floor frames and outside sheets there are to be fitted sliver pieces of equal breadth with the frames, and the full length of the space. Bar rivets through frames and all angle irons about the hull to be spaced every 6 inches and be driven so as to draw frame, sliver piece, and plate tightly together.

"*Bulkheads.*—There will be three athwartship bulkheads of iron—two under the turret of  $\frac{1}{2}$  inch thick and one dividing coal bunker from boilers  $\frac{3}{8}$  inch thick. Between the two turret bulkheads will be two fore and aft bulkheads of  $\frac{1}{2}$ -inch iron, and the passage through the coal bunker will be formed by two bulkheads of  $\frac{3}{8}$ -inch iron.

"Turret bulkheads to be braced x angle irons  $3\frac{1}{2}$  x 6 x  $\frac{1}{2}$  inches. All other bulkheads by angle irons  $3\frac{1}{2}$  x  $3\frac{1}{2}$  x  $\frac{1}{2}$  inches, spaced 24 inches apart.

"*Storerooms and quarters.*—The part forward of the turret chamber will be devoted to quarters for the officers and men, storerooms, magazine, shell room, and ground tackle gear, suitably arranged and divided by first-class joiner work, mainly of white pine, with black walnut furniture in cabin and wardroom. Berths, neatly upholstered and arranged to close up, as per detailed drawings, to be furnished.

"*Motive machinery.*—The motive machinery will consist of two horizontal tubular boilers, two direct acting inclined engines, two screw propellers, and one surface condenser, with independent air, circulating feed, and bilge pumps.

*"Boilers.*—The boilers will be placed one upon each side of the vessel, with one fire room in common, running fore and aft between them. There will be four furnaces in each, two of them at the forward and two at the after ends, with the tubes, through which the products of combustion will return, between them. The coal will occupy the entire vessel between these boilers and the turret chamber, with the exception of a passage 2 feet 6 inches wide amidships, through the upper part of which the wind will be carried to the fire room from the fan blowers.

*"Engines.*—The engines will be attached to four transverse iron keelsons, and will be just sufficiently inclined to permit the cross head of one to work under the shaft of the other, the starboard propeller being worked by the port cylinder. These engines will work entirely independent of each other, thus permitting the one engine to work backward while the other goes ahead when desired, facilitating the rapid evolution of the vessel.

*"Auxiliary steam pumps.*—There will be two auxiliary steam pumps equal in character and capacity to Worthington's No. 5.

#### "PRINCIPAL DIMENSIONS.

##### *"Dimensions of hull.*

Length of vessel over all .....	225 feet.
Length of iron hull .....	183 feet.
Extreme beam over armor .....	45 feet.
Beam of iron hull .....	33 feet.
Total depth of vessels amidships .....	9 feet 1 inch.
8 Depth of iron hull .....	7 feet.
Diameter of deck stanchions .....	2½ inches.
Diameter of diagonal braces .....	2 inches.
Floor and side frames of angle iron .....	4 x 3 x ½ inches.
Angle iron all around the top of iron hull .....	6 x 3½ x ½ inches.
Eyebolts attached to each outside angle-iron frame for securing inside course of timber raft to the iron hull .....	1½ inches.
Blunt bolts for securing the timbers of the raft to each other .....	1½ inches.
Bolts for securing deck beams to raft .....	1½ inches.
Mean length of ditto .....	8 feet.
Thickness of oak planking covering pine raft .....	2½ inches.
Thickness of each sheet of iron on deck .....	½ inch.
Making one inch of iron and 15 of oak.	

##### *Dimensions of boilers.*

Breadth of boilers athwartships .....	9 feet.
Length, fore and aft .....	25 feet 7 inches.
Height .....	6 feet 8 inches.
Length of tubes .....	7 feet 6 inches.
Outside diameter of tubes:	
Upper row .....	1½ inches.
Next row .....	1½ inches.
" " .....	1½ inches.
" " .....	2 inches.
" " .....	2½ inches.
" " .....	2½ inches.
" " .....	2½ inches.
" " .....	2½ inches.
" " .....	2½ inches.
" " .....	2½ inches.
" " .....	3 inches.
" " .....	3½ inches.

\* Diameter.

"Tubes of each boiler to be disposed in two congeries, each congerie to have fifteen tubes in breadth and twelve tubes in height, as above.

Thickness of—

Sides and top of shells.....	$\frac{7}{16}$ inch.
Furnaces and boiler bottoms.....	$\frac{5}{8}$ inch.
Ash pans.....	$\frac{7}{16}$ inch.
Tube sheets.....	$\frac{5}{8}$ inch.
All other parts.....	$\frac{7}{16}$ inch.

"All flat surfaces to be stayed every eight inches with stays one inch in diameter. Wherever flat stays are necessary the section must be equal to one square inch for every point of surface stayed. T-iron of  $3\frac{1}{2} \times 4 \times \frac{3}{4}$  inches to be riveted to top and sides of shell every 4 inches (8 inches apart on each side), as shown in the drawing. All parts, except those exposed directly to the fire, to be double-riveted. The seams of the furnaces to run longitudinally, and to be exactly as shown in the drawing.

*Dimensions of engines.*

	Inches.
Diameter of cylinders.....	22
Length of stroke.....	30
Diameter of piston rods.....	3
Diameter of connecting rods at neck.....	3
Diameter of crank pins.....	6
Length of crank pins.....	5
Diameter of main journals.....	7
Length of main journals.....	10 $\frac{1}{2}$
Diameter of screw shaft.....	7

*Condenser.*

Surface of tubes in condenser.....	2,500 square feet.
Outside diameter of tubes.....	$\frac{5}{8}$ inch.
Thickness of tubes.....	No. 18 wire gauge.
Length of tubes.....	8 feet.

9

*Propellers.*

Diameter of propellers.....	9 feet.
Pitch of propellers.....	12 feet.
Number of blades.....	4

*Smoke pipe.*

Impregnable smoke pipe, height.....	2 feet 3 inches.
Internal diameter of smoke pipe.....	5 feet 0 inches.
Thickness of smoke pipe.....	0 feet 8 inches.
Made of eight plates one inch thick each.	

"*Spare machinery, tools, and equipments.*—Spare machinery and tools for the machinery, and equipments for all departments of the ship, except guns, coal, and ordnance equipments to fit the vessel for service, to be furnished by the contractor. These will be similar in character and extent to the new monitor vessels recently put afloat.

"It is understood that mere omissions of this specification, or of the drawings now exhibited, to enumerate all the parts required to make a complete vessel, fully equipped and ready for active service, shall not be considered a cause for any addition to the contract price."

V. Ericsson not having time to make all the calculations and detailed working plans, that work was confided to Chief Engineer Alban C. Stimers, of the U. S. Navy. Stimers had been engaged with Mr. Ericsson in the construction of the first monitor; had gone in that vessel, in the



capacity of engineer, from New York to Hampton Roads; had there assisted in the contest between the "Monitor" and "Merrimac," and since that time had been engaged more or less, by order of the Navy Department, in superintending the construction of the other monitors contracted for by the Department.

He witnessed the assault made upon Fort Sumter by seven monitors in the spring of 1863, and on his return to Washington had a consultation at the Navy Department.

The question discussed by the officers was whether it would be better to build the vessels in strict accordance with the letter of the contracts, which were being given out without any change whatever, or to take advantage of experience from time to time and make improvements as they went along, although such course would delay the completion and add to the cost of the vessels. It was determined to make changes as experience suggested.

At the time of making bids in response to the call therefor, copied in Finding II, certain general plans and specifications had been prepared and were in the office of Chief Engineer Stimers, in the city of New York, open to inspection by the bidders. Donald McKay was not furnished with the general plan identical with said plans, specifications, and drawings, but at the time of making the contract was furnished with the general plans and details set forth in Finding IV, which embodied changes from and additions to those existing at the time of the bid. Changes and additional work were ordered from time to time during the construction of the vessel or required by the other general plans dated October 25, 1864, and by the altered specifications of August 7, 1863, and those of October 27, 1863.

VI. The Department commenced forwarding to the contractors orders for and drawings of changes before the keel was laid, and those changes, which in the aggregate affected all parts of the vessel, and made  
10 in the end different vessels, were continued, and the drawings therefor furnished for nearly a year after the time specified in the contract for their completion had elapsed, and from the 25th of June, 1864, for about the period of three months work was suspended by the orders of the Navy Department, which had then in contemplation some general changes in its construction which required time to perfect. During this time the contractors were under expenses; they dared not discharge their men for fear of inability to supply their places.

VII. But for the delay of the Government in furnishing plans and specifications, the Nauset would have been substantially completed within the time specified in the contract; the contractors had the means and the ability to do so. The losses sustained by reason of the delays of the Government could not have been prevented by any reasonable prudence or foresight on their part. The labor could not be anticipated, nor could they know from the changes being made the kind, quantity, and quality of the material necessary to be used in complying with the changes.

VIII. In May, 1864, the first of these vessels, the Chimo, was launched at Boston. She was found to be defective. All these vessels having been designed upon the same plan, further work was at once suspended upon them. A commission was appointed June, 1864, to examine them, and to recommend what should be done with them to remedy their defects.



The commission reported on the 9th of July, 1864, recommending that five of the vessels should be changed into torpedo boats in order to lighten their draft, and that the other fifteen should be changed by building up their sides 22 inches, increasing their draft, but rendering them more serviceable as monitors. That recommendation was adopted by the Department, and the proposed changes were carried out.

The allowance for the change of 22 inches is shown in Finding IX.

IX. When it was found that these vessels were failures as originally designed and constructed, they were placed in charge of other officers and altered as recommended by the commission appointed to examine them.

The vessel was completed July 15, 1865. The time necessarily employed in its construction was twenty-five months.

For four alterations the compensation was fixed in advance by the contractors and the Government, as provided in the contract, to wit :

For bulkheads authorized September 29, 1863.....	\$1,547.52
Alteration in pilot-house cover, September 21, 1863 .....	1,000.00
Alteration of port stoppers, October 2, 1863.....	300.00
	<hr/>
	2,847.52
Raising the vessel 22 inches .....	86,000.00

About three months of the prolonged period of seventeen months was necessarily occupied in the performance of the alterations described in this finding.

11 X. The contract price was paid the contractor in full.

The amount received for the changes and alterations by the contractors over and above the contract price was \$192,110.98.

The value and cost of the changes, additions, and alterations made by defendants to said vessel not embraced in the original agreement and not embraced in the special allowance to said contractors, and not paid for in the payments heretofore made to contractors, is the sum of \$24,232.56.

These alterations, when made, complied with the specifications of the same as furnished by the Government.

The cost to the contractor because of the enhanced price of labor and material which occurred during the prolonged term for completing the work is \$61,571.67. Said prolonged term resulted from the delays of the defendants. The exercise of ordinary prudence and diligence on the part of the contractor would not have avoided said enhanced price of material and labor.

The cost of clerk hire and watchman and draftsmen employed by said contractor during the time prolonged by said defendants as aforesaid was the sum of \$14,763; the cost of superintendent and foremen employed by said contractor during the time prolonged by said defendants as aforesaid was the sum of \$16,688, both amounting to \$31,451. While the Nauset was under construction work upon another vessel was proceeding in the same yard by the same contractor, and it does not appear what part of the time of superintendent, clerks, draftsmen, foremen, and watchmen was given to each of the two vessels, but dividing the amount equally between the two vessels gives \$15,725.50. Said amounts do not include the cost of additions and alterations already paid for and set forth in Finding IX.

The foregoing allowances do not include compensation for rent of yard, shops, or plant during the prolonged period, nor for insurance or contractor's time during said period, though each was of substantial value and the plant would have commanded a fair rental.

XI. At the time for making the contract for the construction of the said vessel or battery the contractor was informed that the working drawings were not yet elaborated in detail either for the vessel or its machinery.

XII. When the contract was made the contractor had not his yard fully prepared and no shipbuilders in his employ, and during the twenty-two days between the signing of the contract and the receipt of the first working drawings the contractor was engaged in getting some portions of his yard in order.

During the construction of these vessels Donald McKay's facilities were as follows:

The main machine shop was 320 by 56 feet; 120 of it was two stories high; the upper story was the pattern shop. There were winged buildings annexed—one large one, which was the machinery blacksmith shop, another one called the turret shop, and the boiler shop.

There was another blacksmith shop for the woodwork; that building was about 120 by 30. There was another one called the mold-loft building; that was about 140 by 30 to 35 feet wide. There was a small sawmill on the premises. Then there were storehouses. The ground itself, excluding the improvements, was worth \$50,000. In these shops five hundred men could be employed comfortably.

XIII. Donald McKay died in the county of Essex, Mass., and letters testamentary have been duly issued to claimants.

For the last payment made by defendants contractor signed the following receipt:

NEW YORK, July 26th, 1865.

*U. S. Navy Department to Donald McKay, Jr.*

On account of work done to the light-draft monitor "Nauset," which is extra to the contract dated June 10th, 1863, being the full and final payment on all extras and in full for all claims and demands for that work .....	\$29,863.46
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CR.

By machinery and material received from Casco for use in the construction of the "Nauset" .....	12,950.91
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Balance due .....	16,912.55
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I certify that the materials and labor which are extra to the contract dated June 10th, 1863, put upon the vessel "Nauset," built by Donald McKay, amount in value to \$102,710.<sup>00</sup>/<sub>100</sub> (certificates having been previously given for \$72,847.<sup>35</sup>/<sub>100</sub>), and that they are according to directions which have been given him from time to time.

ROBERT DANDY,

*General Inspector of Steam Machinery for the Navy.*

Approved:

F. H. GREGORY,

*Rear-Admiral, Superintending.*

\$16,912.55.]

NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &C.,

July 31, 1865.

Approved in triplicate for sixteen thousand nine hundred and twelve dollars and fifty-five cents, payable by the Navy agent at Boston.

A. N. SMITH,

*For Ch'f of Bureau.*

BOSTON, Aug. 25th, 1865.

Received of Robt. H. Clark, paymaster, sixteen thousand nine hundred and twelve dollars and fifty-five cents, in full for the within bill.

DONALD MCKAY,  
Pr. Atty. Geo. B. Upton.

McKay objected to the final balance as not sufficient at the time he gave the receipt.

## CONCLUSIONS OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant, Edward P. Bliss, executor of the estate  
13 of Donald McKay, deceased, recover of and from the United States the sum of one hundred and one thousand five hundred and twenty-nine dollars and seventy-three cents (\$101,529.73), made up of the following items:

Additional cost of extras and charges over the sums already received.....	\$24,232.56
Enhanced cost of labor and material necessary to perform the original contract .....	61,571.67
Clerk hire, superintendent, foreman, and watchman during the prolonged period .....	15,725.50
Total.....	101,529.73

14

## XI.

The court filed no opinion to accompany either the original or the judgment as remitted.

The judgment for \$101,529.73 was not appealed from by either party.

## XII.

The \$61,571.67 set forth in the tenth of the final findings in the "Nau-set" case (see X finding above) was composed of \$24,634 enhanced cost after February 10, 1864, the expiration of the contract term for the construction of the "Nauaset," and the remainder, \$36,937.67, was enhanced cost of labor and material furnished by Donald McKay within the contract term (June 10, 1863, to February 10, 1864), but the court did not separate the allowance in its findings.

LOUIS A. PRADT,  
Assistant Attorney-General.  
JOHN S. BLAIR,  
Atty. for Appellee.

WASHINGTON, D. C., Nov. 21, 1898.

15 (Indorsed:) File No., 16979. Supreme Court U. S. October term, 1898. Term No., 394. The United States, appt., vs. Edward P. Bliss, executor of Donald McKay, dec'd. Stipulation and addition to record. Filed Nov. 21, 1898.